conduct which would constructively make the respondent the deserter rather than the deserted.

In the circumstances I regret that the petition must be dismissed.

Petition dismissed.

Solicitors: *Lim, Lim & Co.*

VETHANAYAGAM v. KARUPPIAH & ORS.

[O.C.J. (Raja Azlan Shah J.) March 6, 1968]
[K.L. — Civil Suit No. 1494 of 1967]

Societies — Unlawful society — Right of member to restrain the violation of rules — Societies Act, 1966, s. 12(3) proviso.

Practice and Procedure — Injunction — Interim injunction — Breach of contract — Not capable of being specifically enforced — No injunction — Specific Relief (Malay States) Ordinance, 1950, s. 54 (f).

The plaintiff and the defendants were members of the local branch of the Malaysian Indian Congress. By operation of section 12 of the Societies Act, 1966, the local branch was deemed to be an unlawful society, as the parent body had failed to apply to the registrar for his approval of the local body within the time specified in section 12(3) of the Act.

At the annual general meeting of the local branch, the defendants were elected members of the branch committee. The plaintiff applied by motion for an interim injunction to restrain the defendants from violating the rules of the Constitution of the Malaysian Indian Congress, and from acting further as members of the branch committee until after the trial of the action. The issue before the court was whether it was proper to grant an interim injunction at the suit of a member of an unlawful society to restrain other members of that society from violating its rules.

Held, dismissing the motion: the Societies Act, 1966, having declared the local branch to be unlawful, no member of the branch could acquire any right which was capable of being specifically enforced. Section 54(f) of the Specific Relief (Malay States) Ordinance, 1950, prohibits the granting of an injunction to prevent the breach of a contract the performance of which would not be specifically enforced. The court could not, therefore, lend its aid to grant an injunction at the suit of the plaintiff, a member of the unlawful society to restrain the defendants from infringing the rules of the Constitution of the Malaysian Indian Congress.

Observations on the jurisdiction to grant an interim injunction.

Cases referred to:—

(1) *Surajmull Nagoremull* v. *Triton Insurance Co.* (1924), 52 I.A. 126; A.I.R. 1925 P.C. 83; [1925] M.W.N. 257.

(2) *Tharmalingam* v. *Sambanthan* [1961] M.L.J. 63, C.A.

(3) *Bishun Prashad* v. *Sashi Bhusan*, A.I.R. 1923 Pat. 133.

(4) *Harris* v. *Amery*, L.R. 1 C.P. 148.

(5) *Bhikaji Sabaji* v. *Bapu Saju* (1876-77), 1 I.L.R. Bom. 550.

(6) *Soh Hood Beng* v. *Khoo Chye Neo* (1897), 4 S.S.L.R. 115, C.A.

CIVIL SUIT.

Lim Kean Chye and *S. Kulasegaran* for the plaintiff.

Dato' Athi Nahappan for the defendants.

Cur. Adv. Vult.

Raja Azlan Shah J.: This is a motion for an interim injunction restraining the defendants by themselves, their servants, and/or agents from infringing or violating the rules of the Constitution of the Malaysian Indian Congress and from acting any further as members of the branch committee of the Kampong Pandan Branch of the said Congress until after the trial of the action.

Dato' Athi Nahappan, on behalf of the defendants, invited this court to determine the motion on the pleading as it stands. He therefore contended that since the statement of claim does not plead illegality under the Societies Act, 1966, it does not avail the plaintiff to raise that point of law in this court. That proposition is not sustainable. It is the duty of this court to take the point even though the plaintiff had not pleaded it (see *Surajmull Nagoremull* v. *Triton Insurance Co.*).(1) At all events that point was raised and fully argued by both sides in the course of this hearing and it cannot now be said that the defendants are taken by surprise.

Let me recount the facts as briefly as possible. The plaintiff and defendants were at one time members of the Kampong Pandan Branch of the Malaysian Indian Congress (hereinafter referred to as "the local branch"). As such, the rules of the constitution of the Congress bind them in contract and whatever rights or liabilities they may possess must therefore flow from the said rules (see *Tharmalingam* v. *Sambanthan*).(2) The annual general meeting which was held on May 31, 1964 was frustrated by some rowdy elements and it thus became necessary for the State branch of the Congress to take over the responsibilities of the local branch. However, no action was taken by the State branch as required under the rules to collect membership subscriptions or to hold the annual general meeting until 1967. The local branch therefore became defunct although technically it had been established and was in existence. Now, with the coming into force of the Societies Act, 1966, on February 1, 1966, such branch is deemed to be an unlawful society unless the parent body applies to the registrar in writing for his approval within six months from the commencement of the Act or such extended period as may be allowed by him, in any case not exceeding three months (see proviso to section 12(3)). This the parent body had failed to do and consequently the local branch is an unlawful society within the meaning of the Act. That was the position on October 15, 1967 on which date the local branch purported to hold its annual general meeting at which the defen-

dants were elected chairman and vice-chairman respectively.

To my mind, this motion can be determined on the narrow ground whether it is just and proper to grant a temporary injunction at the suit of a member of an unlawful society to restrain other members of that society from doing acts contrary to the rules of the constitution of the Congress.

Jurisdiction to grant a temporary injunction is always a matter of discretion which is to be exercised in accordance with well-known principles. An order for a temporary injunction can be sought only in aid of a prospective order for a perpetual injunction. If, therefore, in the event of the plaintiff's success, he cannot obtain a decree for perpetual injunction, it is not competent for him to ask for a temporary injunction (see *Bishun Prashad* v. *Sashi Bhusan*).[3] In other words, a temporary injunction will not be granted in cases where a permanent injunction is not available under sections 52 to 54 of the Specific Relief (Malay States) Ordinance, 1950. Section 54(f) enacts that an injunction cannot be granted to prevent the breach of a contract the performance of which would not be specifically enforced. This means that a court will not grant an injunction to prevent the breach of a contract if the contract be such as cannot be specifically enforced under the provisions of Chapter II of the Ordinance, for example section 20(b). The grant of injunction therefore is always guided by the same principles as the grant of specific performance of a contract, and if the contract is such as not to be capable of being specifically enforced, no injunction can be granted to prevent its breach.

The facts of the present case make it more analogous to such cases as *Harris* v. *Amery* [4] and *Bhikaji Sabaji* v. *Bapu Saju.*[5] In *Harris'* case an association of more than twenty persons for the purpose of acquisition of gain was not registered as required under section 4 of the English Companies Act, 1862, and was therefore illegal. That being so, the members could not rely on their agreement for establishing any right in a court of law. That case was applied by Sargent, J. in *Bhikaji Sabaji* v. *Bapu Saju,*[5] a case under the Indian Companies Act (X of 1866) which is in effect identical with section 4 of the English Act. That case also concerns an agreement between more than twenty persons to form an association for the purpose of carrying on a business that has for its object the acquisition of gain. Such an association as in *Harris'* [4] case must be registered under the corresponding Companies Act. The said association was not registered; it was therefore an unlawful association. A member thereof, so it was held, acquired no right under the said agreement which can be enforced in a court of law. The court accordingly refused to grant an injunction at the suit of a member to restrain a breach of such agreement. It is almost in the same vein that Leach J. remarked in *Soh Hood Beng* v. *Khoo Chye Neo* [6] (at p. 119):—

> ". . . . if once you ascertain that a company association or partnership is illegal or unlawful then neither can the company, association or partnership sue nor be sued by its members".

I am of the view that the principles enunciated in the above cases are applicable to our present case. The Societies Act, 1966, having declared the local branch to be unlawful, no member can acquire any right which is founded upon that which is so declared to be unlawful. This court will therefore not lend its aid in granting an injunction to restrain the defendants by themselves, their servants, and/or agents from infringing or violating the rules of the Constitution of the Malaysian Indian Congress.

The motion is accordingly dismissed with costs.

Motion dismissed.

Solicitors: *Ranjit, Thomas & Kula; Athi Nahappan & Co.*

TOPAIWAH v. SALLEH

[F.C. (Azmi C.J. (Malaya), Suffian & MacIntyre F.JJ.) March 11, 1968]

[K.L. — Federal Court Civil Appeal No. X.92 of 1966]

Damages — Quantum of — Negligence — Personal injuries — Loss of earnings — Pain and suffering and loss of amenities — Reversing the finding of a trial judge as to amount of damages.

This was an appeal against the quantum of damages awarded by the High Court at Johore Bahru. The learned trial judge awarded $32,012.60 altogether being (1) $5,675 special damages (2) $27,337.60 general damages. The general damages were made up of two items: (1) $8,337.60 for future loss of earnings and (2) $19,000 for pain and suffering and loss of amenities. There was no complaint against the award of $8,337.60 for future loss of earnings but it was against the award for special damages and for pain and suffering and loss of amenities that the appellant complained.

Held, dismissing the appeal: the Federal Court will be disinclined to reverse the finding of a trial judge as to the amount of damages merely because they think that if they had tried the case in the first instance they would have given a lesser sum. In order to justify reversing the trial judge on the question of the amount of damages it will generally be necessary that this court should be convinced either that the judge acted on some wrong principle of law, or that the amount awarded was so extremely high or so very small as to make it an entirely erroneous estimate of the damages to which the plaintiff is entitled. The assessments which the courts have made over the years form some guide to the kind of figure which is proper and which the Federal Court will follow in the light of the special facts of each particular case.